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FILED '08 OCT 27 14:04 JSDC-OP

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**CV '08 - 1272 BR**

MARCO ARMENTA-CARDOSO,

Case No. \_\_\_\_\_

Plaintiff,

v.

**NOTICE OF REMOVAL TO  
FEDERAL COURT**

CITY OF GRESHAM; CITY OF GRESHAM  
POLICE DEPARTMENT, CARLA C. PILUSO,  
CHIEF OF POLICE; JAMES SEYMOUR;  
DIANA DEL GARBINO; JENNIFER  
RITCHARD; LEESA KLEPPER; and DIANA  
GROSSI,

Defendants.

TO THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF OREGON:

Please take notice that defendants hereby remove this action from the Circuit Court of the  
State of Oregon for the County of Columbia to the United States District Court for the District of  
Oregon, Portland Division. This removal is based upon the following facts:

1. The above-named defendants are defendants in a civil action in the Circuit Court of the State of Oregon for the County of Multnomah entitled "MARCO ARMENTA-CARDOSO, Plaintiff v. CITY OF GRESHAM; CITY OF GRESHAM POLICE DEPARTMENT, CARLA C. PILUSO, CHIEF OF POLICE; JAMES SEYMOUR; DIANA DEL GARBINO; JENNIFER RITCHARD; LEESA KLEPPER; and DIANA GROSSI, Defendants" Case No. 0810-14262. On October 7, 2008, plaintiff filed his Complaint. A copy of the Complaint, seeking monetary damages for alleged constitutional violations and state torts, is attached as Exhibit A.

2. This Notice of Removal is filed within thirty (30) days of receipt of notice by City of Gresham by defendant of plaintiff's Complaint claiming a violation of plaintiff's constitutional rights.


3. This lawsuit is a civil action for which this Court has original jurisdiction (federal question) under 28 USC § 1331 and is one in which may be removed to this Court by defendants pursuant to the provisions of 28 USC § 1441(a). The case arises under 42 USC § 1983 and appears to allege a violation of the Constitution of the United States.

4. Written notice of the filing of this Notice of Removal will be given to the plaintiff as provided by law.

5. A true copy of this Notice of Removal will be filed with the Court Clerk of the Circuit Court of the State of Oregon the County of Multnomah, as provided by law.

WHEREFORE, defendants pray that the above action now pending against it in the Circuit Court of the State of Oregon for the County of Multnomah be removed to the United States District for the District of Oregon.

DATED this 24th day of October, 2008.

  
BRUCE L. MOWERY  
OSB #73216  
(503) 480-7251  
Attorney for Defendants

Steven M. McCarthy, Esq. OSBN 081030  
 McCarthy Law Offices  
 1265 Highway 51  
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 Email: Caractacus@aol.com

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
 FOR MULTNOMAH COUNTY

MARCO ARMENTA-CARDOSO,

Plaintiff,

v.

CITY OF GRESHAM; CITY OF GRESHAM POLICE DEPARTMENT,  
 CARLA C. PILUSO, CHIEF OF POLICE; JAMES SEYMOUR; DIANA DEL GARBINO; JENNIFER RITCHARD; LEESA KLEPPER; and  
 DIANA GROSSI,

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES FOR  
 CONVERSION, NEGLIGENCE, VIOLA-  
 TION OF CIVIL RIGHTS; and EQUITA-  
 BLE RELIEF

Comes now Plaintiff MARCO ARMENTA-CARDOSO and for his claims  
 and causes of action against Defendants, states as follows:

GENERAL ALLEGATIONS

A. Parties

1. At all relevant times herein, Plaintiff was a resident of Multnomah County, Oregon.
2. Defendant City of Gresham is a public entity, and operates the City of Gresham.

1 ham Police Department. Plaintiff is informed and believes that at all relevant times,  
 2 Carla C. Piluso was the Chief of Police, and that the remaining named defendants were  
 3 officers and agents of the Gresham Police Department and the City of Gresham, and  
 4 responsible in whole or in part for the occurrences complained of herein. Plaintiff is at  
 5 present unaware of the identities of others, known to Defendants, who were involved in  
 6 the incidents complained of herein. Defendants, and each of them, acted either within  
 7 the course and scope of their agency, employment, and duties, or did not; but at all times  
 8 all Defendants acted under color of state law.

9 3. In doing the things herein alleged, Defendants, and each of them, if not  
 10 deemed to be one individual defendant, acted and conspired with each remaining defen-  
 11 dant in a common design to commit the breaches, representations, misfeasances,  
 12 nonfeasances, and tortious conduct alleged herein, and in doing or not doing the things  
 13 alleged herein, acted within the course and scope of said conspiracy and with the ex-  
 14 press or implied knowledge and consent of one another and each of them, and with the  
 15 knowledge, actual or constructive, that the conduct of each other defendant was tortious  
 16 or in breach of duty to Plaintiff. By reason of such conspiracy and concerted effort  
 17 Plaintiff has been damaged as alleged. Accordingly, Defendants and each of them are  
 18 liable jointly and severally to Plaintiff.

19 **B. Jurisdiction and Venue**

20 4. This Circuit Court has jurisdiction pursuant to Article VII, §9 of the Oregon  
 21 Constitution, over the parties and subject matter herein; and also has concurrent jurisdic-  
 22 tion over Plaintiff's claims pursuant to 42 USC §§1983 and 1988. Venue is proper  
 23 because within this judicial district and at all relevant times, all parties live, the subject  
 24 of the claims of Plaintiff arose herein.  
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1 C. Facts

2 5. On the afternoon of June 10, 2007, Plaintiff became involved in a domestic  
3 dispute with his wife, Trinidad, as a result of which he was arrested. Defendants James  
4 Seymour, Diana Del Garbino, Jennifer Ritchard, and Leesa Klepper responded to the  
5 incident report. In the course of the arrest at Plaintiff's residence, said Defendants and  
6 others, whose identities are known only to Defendants, confiscated the firearms listed in  
7 attachment A hereto, along with related accessories and sporting goods including  
8 scopes, ammunition, knife collections, hunting gear, and sharpening tools. The fire-  
9 arms, knives, ammunition, and equipment were identified in minimum detail in an  
10 inventory prepared by Defendant Ritchard. Aside from the sentimental value the prop-  
11 erty had to Plaintiff, the same was worth well in excess of \$50,000, with some firearms  
12 increasing in value with time.

13 6. On or about June 11, 2007, Plaintiff was arraigned and ordered by the above-  
14 entitled Court to live elsewhere as a condition of his pre-trial release, and was not to  
15 possess his firearms. The said order was renewed on July 13, 2007.

16 7. In a certified, return receipt letter to him from Defendant Carla Piluso, signed  
17 by Defendant Deanna Grossi, postmarked July 25, 2007, and addressed to 227 SE 192<sup>nd</sup>  
18 Avenue in Portland, the residence from which he was excluded, he was advised that "a  
19 release order has been issued authorizing release" of his aforesaid property and that if he  
20 did not claim it, the same would be destroyed within 30 days thereof. Plaintiff never  
21 received the notice, nor did any such order issue from this or any Court, nor had Plain-  
22 tiff then been convicted of any violation of law.

23 8. On or about September 19, 2007, the date set for his trial, and with the assis-  
24 tance of his court appointed attorney, Plaintiff entered a plea of guilty to two counts of  
25 harassment. He was placed on 18 months court probation. As a condition of his proba-  
26 tion, he was fined and precluded from recovery of the firearms subject hereof until  
27 December 19, 2007, and only upon the completion of Court ordered evaluations.

9. After December 19, 2007, upon the successful completion of his court ordered evaluations, Plaintiff was free to return to his home and commenced efforts to retrieve his property. Defendants alleged that his property was destroyed.

10. On April 7, 2008, Plaintiff presented his claim against the City of Gresham pursuant to the Oregon Tort Claims Act. His claim was denied on June 11, 2008.

# I

**FIRST CAUSE OF ACTION**

**[Conversion]**

11. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10 as though fully set forth herein.

12. At all relevant times, Plaintiff was the owner of that certain personalty seized and identified in the inventory of Defendant Jennifer Ritchard, attached hereto as Exhibit A, in addition to related accessories and sporting goods including scopes, ammunition, knife collections, hunting gear, and sharpening tools, for which no accounting was made by Defendants. The total value of these items exceeds \$50,000.

13. Pursuant to the due process clauses of the US and Oregon Constitutions, and Art. XV, §10, of the latter, Defendants were under a duty to insure that no property owned by Plaintiff should be forfeited by government unless and until that person is convicted of a crime involving the property, or that said property be forfeited only upon due process of law.

14. Plaintiff is informed and believes and thereon alleges that at some time after the seizure of his aforesaid property, Defendants, acting in flagrant violation of Plaintiff's rights under the Oregon Constitution as aforesaid, converted the same to their own use and/or sold or destroyed the same, and thereafter ratified the conduct of the individuals involved as that of Defendant City of Gresham and the Gresham Police Department.

15. As a direct and proximate result thereof, Plaintiff has been damaged by reason of the loss of the aforesaid property in the minimum amount of \$50,000, together with interest thereon from and after June 10, 2007; and has sustained damages by reason of the loss of use of his property, the reasonable value of which is \$5,000 per year.

16. As a further direct and proximate result of the conversion of Plaintiff's property by Defendants, he has suffered substantial emotional distress, anxiety and anguish over the loss of his prized possessions, heirlooms, antiques, and cherished gifts; in addition to the loss of trust in local government, embarrassment, anguish, and humiliation, the reasonable value of which is \$150,000.

## II

## SECOND CAUSE OF ACTION

**[Negligence]**

17. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1-10 and 11-16 as though fully set forth herein.

18. Defendants and each of them, were at all times under a duty to act competently, lawfully, and to exercise the skill and care that a reasonably prudent person would have exercised in similar circumstances and to comply with the law, including, but not limited to, identifying, creating, drafting, promulgating, and implementing appropriate and lawful practices and procedures regarding seized property, including Plaintiffs, and in enforcing the same and sanctioning deviation therefrom.

19. At all relevant times, Defendants knew, or in the exercise of reasonable diligence under the circumstances should have known that Plaintiff had not been convicted of any crime until September 19, 2007, and just as with any other domestic violence incident and consequences thereof, that he was removed from his home and ordered to stay away, that he was not permitted to have possession of firearms. Defendants, and each of them, were at all times actually and constructively aware, both as



1 ordinary citizens and as police officers, of the due process clauses of the US and Oregon  
 2 Constitutions, and provisions of the Oregon Constitution, Article XV, Section 10,  
 3 providing that no property shall be forfeited before conviction, and guarantees of the US  
 4 Constitution that no property shall be taken except upon due process of law.

5 20. Notwithstanding the foregoing, all Defendants, among other responsables,  
 6 whose identities are not yet known to Plaintiff, failed to devise, institute, promulgate,  
 7 and require compliance with any policy and/or procedure sufficient to protect the rights  
 8 of Plaintiff herein as to his seized chattels, and if such policy or procedure was in place  
 9 which did so, they failed to require its implementation as to the subject matter hereof,  
 10 and failed to provide Plaintiff any notice of any imminent disposition of his firearms,  
 11 nor to advise this Court or Plaintiff's counsel thereof, and instead failed to return Plain-  
 12 tiff's property to him and instead allegedly destroyed the same or converted it to their  
 13 own use.

14 21. As a direct and proximate result of the foregoing, Plaintiff sustained the  
 15 damages as herein alleged.

### 16 III

#### 17 THIRD CAUSE OF ACTION

#### 18 [Federal and State Due Process]

19 22. Plaintiff re-alleges and incorporates by reference the allegations of Para-  
 20 graphs 1-10, 11-16, and 17-21 as though fully set forth herein.

21 23. The failure of Defendants in their conduct, policies and practices as identi-  
 22 fied hereinabove transgressed substantive limits on state action set forth in the Fourth  
 23 and Fourteenth Amendments to the Constitution of the United States, and in the Oregon  
 24 Constitution, Article I, Section 10 and Article XV, Section 10.  
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1 IV

2 **EQUITABLE RELIEF**

3 24. Plaintiff re-alleges and incorporates by reference the allegations of Para-  
4 graphs 1-10, 11-16, 17-21, and 23 as though fully set forth herein.

5 25. An actual controversy has arisen between Plaintiff and Defendants as to the  
6 rights, obligations, and duties owed one another, particularly as to the conduct and  
7 policies of Defendants, and related issues, in seizing Plaintiff's chattels and depriving  
8 him thereof. Plaintiff alleges as aforesaid that Defendants City of Gresham, the Gresham  
9 Police Department, violated his rights by failing to implement an appropriate and  
10 lawful policies and procedures to insure that seized property, including his, was handled  
11 properly and lawfully; that the individual named defendants and others converted or  
12 negligently disposed of the property, either within the course and scope of their employ-  
13 ment or not. Defendants dispute the foregoing.

14 V

15 **RIGHT TO AMEND AND DEMAND FOR JURY TRIAL**

16 26. Plaintiff is unaware of the identities of other individuals and entities respon-  
17 sible in the claims herein, including, but not limited to, the identities of the appraiser(s)  
18 of the Turquoise property subject hereof, used in the representations made by Defen-  
19 dants herein, and will seek leave to amend this complaint to include their identities and  
20 capacities upon discovery thereof.

21 27. Plaintiff demands a jury trial.

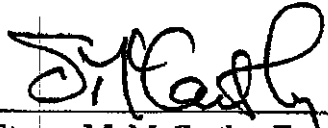
22 VI

23 **PRAYER FOR RELIEF**

24 Wherefore, having set forth various causes of action against Defendants, Plaintiff  
25 prays relief as follows:  
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- 1 1. For general and compensatory damages in the amount of \$150,000 as and for
- 2 emotional distress occasioned by the conversion of personality;
- 3 2. For special and compensatory damages for the reasonable value of the personality
- 4 subject hereof in the amount of \$50,000; together with damages for the loss of use of said
- 5 personality at the rate of \$5000 per month from and after December 19, 2007;
- 6 3. For treble the foregoing amounts;
- 7 4. For damages for violation of Plaintiff's constitutional rights in the amount of
- 8 \$500,000;
- 9 5. For a declaration determining the rights of the parties hereto and that the practices,
- 10 policies, procedures, and practices of Defendant City of Gresham and the Gresham
- 11 Police Department are constitutionally deficient;
- 12 6. For equitable attorneys fees and pursuant to statute or otherwise as the law allows;
- 13 7. For actual costs of suite herein;
- 14 4. For all such other relief as the Court deems just and proper.

15 Dated: October 6, 2008

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18 Steven M. McCarthy, Esq.  
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DA	JUV	REFR CASE NUMBER		CASE NUMBER	PAGE OF
INV	INCIDENT	CLASSIFICATION		DATE/TIME REPORTED	07-8104
LOCATION OF OCCURRENCE		OFFENSE STATUS			
227 SE 192nd		<input type="checkbox"/> Open/Pending <input type="checkbox"/> Unfounded <input type="checkbox"/> Suspended <input type="checkbox"/> Cleared			
ONE SENTENCE SUMMARY OF INCIDENT					
CODE	NAME	SEX	RACE	DOB	DRIVERS LICENSE STATE
HOME ADDRESS					
BUSINESS/SCHOOL ADDRESS					
HOME PHONE					
BUSINESS PHONE					
Was the property seized under a search warrant? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Hold for Processing					
*ALL SERIALIZED PROPERTY HAS BEEN CHECKED THROUGH LEADS/CIC OFFICER INITIALS					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Shotgun	Remington	12ga	Brown
Serial Number or OAN		Engrave/Particularities	Value	Locker #	Assoc. Case #
40093					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Pellet gun	Winchester	Pellet gun	pellet
Serial Number or OAN		Engrave/Particularities	Value	Locker #	Assoc. Case #
no serial numbers					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K		Bat	Louisville	H+B	wooden
Serial Number or OAN		Engrave/Particularities	Value	Locker #	Assoc. Case #
no					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K		Rifle	Ruger	mini 14	223 Cal.
Serial Number or OAN		Engrave/Particularities	Value	Locker #	Assoc. Case #
1831169					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
1		Shotgun	unk	worn off	Brown
Serial Number or OAN		Engrave/Particularities	Value	Locker #	Assoc. Case #
		Butt the end			
OTHER					
By signing here, I acknowledge that I voluntarily relinquished the above listed items for safekeeping. I further acknowledge that failure to pickup these items within 90 days severs all ownership ties to the listed property.					Property Receipt #
Submitting Officer: <i>Richard</i>					39480



DA	JUV	REFER CASE NUMBER		CASE NUMBER	PAGE/OF
INV	INCIDENT	CLASSIFICATION		DATE/TIME OCCURRED	DATE/TIME REPORTED
	DV Assault 4				07-8102
	LOCATION OF OCCURRENCE	OFFENSE STATUS			
	221 32 112nd	<input type="checkbox"/> Open/Pending <input type="checkbox"/> Unfounded <input type="checkbox"/> Suspended <input type="checkbox"/> Cleared			
	ONE SENTENCE SUMMARY OF INCIDENT				
CODE	NAME	SEX	RACE	DOB	DRIVER'S LICENSE/STATE
HOME ADDRESS					HOME PHONE
BUSINESS/SCHOOL ADDRESS					BUSINESS PHONE
Was the property seized under a search warrant? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Hold for Processing					
~ALL SERIALIZED PROPERTY HAS BEEN CHECKED THROUGH LIDS/NCIC OFFICER INITIALS					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Highpowered w/ scope	Rifle	Santa Fe 1995	Black
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
n/a					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	High powered rifle w/ scope		une	Black 7mm
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
inside Silver Case		MAREKUS 7mm 755			
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Long rifle	SPORT KING	22	Silver
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
(handgun)		w/ clip			
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Rifle w/ scope	Winchester	70	Brown
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
G1505854		w/ camo strap			
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Rifle w/ scope		600	72
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
04148836					
OTHER					
By signing here, I acknowledge that I voluntarily relinquished the above listed items for safekeeping. I further acknowledge that failure to pickup these items within 90 days, severs all ownership ties to the listed property.					Property Receipt #
					39309
Submitting Officer: [Signature]					

DA	JUV	REFER CASE NUMBER		CASE NUMBER	PAGE/OF
INV	INCIDENT	CLASSIFICATION	DATE/TIME OCCURRED	DATE/TIME REPORTED	
	LOCATION OF OCCURRENCE	OFFENSE STATUS			
	ONE SENTENCE SUMMARY OF INCIDENT	<input type="checkbox"/> Open/Pending <input type="checkbox"/> Unfounded <input type="checkbox"/> Suspended <input type="checkbox"/> Cleared			
CODE	NAME	SEX	RACE	DOB	DRIVER'S LICENSE STATE
HOME ADDRESS				HOME PHONE	
BUSINESS/SCHOOL ADDRESS				BUSINESS PHONE	
Was the property seized under a search warrant? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Hold for Processing					
ALL SERIALIZED PROPERTY HAS BEEN CHECKED THROUGH LIDS/NCIC OFFICER INITIALS					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Rifle w/ jeweled slide w/scope	Winchester	Black	300
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
G1770758					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Rifle scope		670	Black 264
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
115896					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Rifle w/scope	Remington	700	Black 7mm
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
E6266245		Jeweled slide			
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Shotgun mossberg			Black 12 GA
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
MV46682A		pistol grip			
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Shotgun w/scope	Remington	760	Black 270
Serial Number or OAN		Engrave/Peculiarities		Value	Locker #
110447		w/ Brown leather strap			
OTHER					
By signing here, I acknowledge that I voluntarily relinquished the above listed items for safekeeping. Further acknowledge that failure to pickup these items within 90 days reverts all ownership ties to the listed property.					Property Receipt #
					39310



DA	JUV	REFER CASE NUMBER		CASE NUMBER	PAGE/OF
INV	INCIDENT	CLASSIFICATION	DATE/TIME OCCURRED	DATE/TIME REPORTED	
	LOCATION OF OCCURRENCE	OFFENSE STATUS			
	ONE SENTENCE SUMMARY OF INCIDENT	<input type="checkbox"/> Open/Pending <input type="checkbox"/> Unfounded <input type="checkbox"/> Suspended <input type="checkbox"/> Cleared			
CODE	NAME	SEX	RACE	DOB	DRIVER'S LICENSE/STATE
HOME ADDRESS			HOME PHONE		
BUSINESS/SCHOOL ADDRESS			BUSINESS PHONE		
Was the property seized under a search warrant? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Hold for Processing					
ALL SERIALIZED PROPERTY HAS BEEN CHECKED THROUGH LEDS/NCIC   OFFICER INITIALS					
CODE	QTY	Item	Brand	Model/Style	Color
K	1	Shotgun w/ scope	Savage	20 gauge	Black
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
P100953					
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
OTHER					
CODE	QTY	Item	Brand	Model/Style	Color
Serial Number or OAN		Engrave/Peculiarities	Value	Locker #	Assoc. Case #
OTHER					
By signing here, I acknowledge that I voluntarily relinquished the above listed items for safekeeping. I further acknowledge that failure to pickup these items within 90 days severs all ownership ties to the listed property.					Property Receipt #
Submitting Officer					39311